

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
L & L WINGS, INC.,

Plaintiff,  
v.

MARCO-DESTIN INC., 1000 HIGHWAY  
98 EAST CORP., PANAMA SURF & SPORT,  
INC., and E & T INC.,

Defendants.

-----X  
STATE OF NEW YORK

COUNTY OF NEW YORK ss:

Ariel Levy, being duly sworn, deposes and says:

1. I am a Vice President of Plaintiff, L & L Wings, Inc. (herein, "Wings"), in the above captioned action and am fully familiar with the facts and circumstances of the action.

2. I make this Affidavit in Opposition to Defendants', 1000 Highway 98 East Corp. (herein, "1000 Highway"), and Panama Surf & Sport, Inc. (herein, "Panama"), Motion for Summary Judgment dismissing the Complaint as against these two Defendants.

3. Plaintiff, Wings, is a South Carolina corporation authorized to do business in the State of New York and having its principal place of business at 8 East 41<sup>st</sup> Street, in the City, County and State of New York.

4. It is my understanding from Plaintiff's attorney that Defendants, Panama and 1000 Highway, allege on this motion that since neither of these Defendants are involved in the day to day operation of stores, neither of them have ever used nor do they now use Plaintiff's mark "Wings" or its trade dress.

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AFFIDAVIT OF ARIEL LEVY IN  
OPPOSITION TO DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT

5. I have gathered information which clearly demonstrates that Defendants' position is erroneous.

6. Your affiant engaged the services of private investigators to investigate the use of Plaintiff's mark and trade dress by Defendants, 1000 Highway and Panama.

7. Your affiant engaged the services of R.E.I. Investigations, a private investigation service, regarding Defendant, 1000 Highway. The report of the R.E.I. investigator is annexed hereto as Exhibit A. The report is dated March 18, 2007. According to the report, on that date the investigator arrived at the property known as 1000 Highway 98 East, in Destin, Florida and observed thereon a store being operated under the name "Wings". The report and accompanying photographs clearly demonstrate that a store is being operated at 1000 Highway 98 East in Destin, Florida utilizing the name "Wings" and Plaintiff's trade dress.

8. Your affiant obtained a D&B Business Background Report™ for Defendant, Panama Surf & Sport Inc. A copy of the report is annexed hereto as Exhibit B. The report lists the address for Panama Surf & Sport, Inc. at 12208 Front Beach Road, Panama City, Florida and a business office address at 10400 NW 33<sup>rd</sup> St. #110, Miami, Florida (the address set forth for all Defendants in the Complaint). The report describes the "operations" of the company as "Retails surf apparel (90%) and surf equipment (10%)..." (See Exhibit B hereto, subsection entitled "Operations").

9. Your affiant engaged the services of Middlebrooks, Richter and Associates, a private investigation service, regarding Defendant, Panama. The report of the investigator is annexed hereto as Exhibit C. The report and accompanying photographs clearly demonstrate that a store is being operated at 12208 Front Beach Road, Panama City Beach, Florida (the address set forth

in the D&B report for Defendant, Panama), utilizing the name "Wings" and Plaintiff's trade dress.

10. Based upon the information gathered by your affiant regarding the business operations of Defendants, Panama and 1000 Highway, it appears that they operate stores utilizing the name "Wings" and Plaintiff's trade dress.



Ariel Levy

Subscribed and sworn to before me this  
31<sup>st</sup> day of December, 2007

Linda Krasner  
Notary Public  
My commission expires on \_\_\_\_\_ (SEAL)

LINDA KRASNER  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01KRG178515  
QUALIFIED IN NASSAU COUNTY  
COMMISSION EXPIRES DECEMBER 3, 2011